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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1531 OF 1997

The Managing Director,
Balasaheb Desai Sahakari
Sakhar Karkhana Ltd. ... Petitioners

V/s

Shri Kashinath Ganpati Kambale ... Respondent

None for the petitioners.

Mr. K.S. Bapat for the respondent.

AND

WRIT PETITION NO. 6848 OF 2000

Kashinath Ganapati Kamble ... Petitioner

V/s

1. The Managing Director,
   Balasaheb Desai Sahakari Sakhar
   Karkhana Ltd. & ors. ... Respondents

Mr. K.S. Bapat for the petitioner.

None for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 24TH JANUARY, 2007.

ORAL JUDGMENT:

1. These writ petitions challenge the orders of the Labour Court in Application (BIR) No. 16 of 1994 and of

the Industrial Court in Appeal (IC) Nos. 3 and 4 of 1991. The Labour Court had allowed the application filed by the workman who is the petitioner in Writ Petition No. 6848 of 2000 and respondent No.1 in Writ Petition No. 1531 of 1997. While granting the relief of reinstatement with continuity of service, the Labour Court had directed payment of half the back wages to which the workman was entitled. Aggrieved by the orders of the Labour Court, the workman and the Karkhana, where he was employed, had filed appeals before the Industrial Court. By an order dated 10th March, 1997, the Industrial Court dismissed both the appeals.

2. The facts giving rise to the present petitions are as follows:-

. The workman was employed with the Karkhana as a peon from 20.7.1974. On 1.12.1983 he was issued a show cause notice requiring him to explain his conduct in respect of the various allegations contained in the notice. A chargesheet was issued on 29.12.1983. Various charges were levelled against the workman including those of late attendance, absence without leave, leaving the place of work without permission, signing the muster roll without remaining present and attempting to obtain payment of salary for those days and disobeying the

orders of the superiors. An enquiry was instituted against the workman. On 25.6.1984, charges were held to be proved by the enquiry officer. On this basis, the Karkhana dismissed the workman from service on 5.7.1984.

3. Aggrieved by the order of dismissal, the workman approached the Karkhana as required under the Bombay Industrial Relations Act. Since there was no favourable response from the Karkhana, the workman filed an application under Section 78 of the Bombay Industrial Relations Act. The main grievance pleaded in the application was that the workman's services have been terminated pursuant to an enquiry which was held in violation of the principles of natural justice. It was also pleaded that the action had been taken against the workman only because the Karkhana wanted to victimise the workman.

4. The Karkhana filed its written statement denying the charges contained in the application. The Karkhana contended that the workman's service record did not warrant any leniency on the part of the Karkhana and, therefore, his services had been terminated pursuant to a legal and fair enquiry.

5. The Labour Court, vide its order dated 17.3.1990

held that the enquiry instituted against the workman was fair and proper and in compliance with the principles of natural justice. This order was not challenged by the workman. The Labour Court then considered the remaining issues as to whether the punishment imposed on the workman was justified. The workman examined himself to establish that his services had been terminated by way of victimisation and not on the basis of any misconduct. The Karkhana examined 5 witnesses to demonstrate that the workman did not deserve reinstatement in service as he owns a footwear shop and is earning income from this shop.

6. The Labour Court held that the misconducts alleged against the workman though proved, were not so serious as to warrant the punishment of dismissal. The Labour Court observed that the Karkhana had not brought any material on record to indicate that the past service record of the workman was marred by punishments, memos, warnings, etc. The Labour Court therefore held, taking into consideration the nature of the misconducts alleged against the workman, that it was not proper to deny him the reinstatement in service. The Labour Court then considered the issue regarding back wages payable to the workman. While doing so, the Labour Court disbelieved the evidence of the Karkhana regarding the ownership of

the footwear shop, which allegedly belong to the workman. The Labour Court held that, since the shops licence issued under the Bombay Shops & Establishments Act was not produced by the Karkhana, it cannot be believed that a shop was owned and run by the workman. However, the Labour Court was of the opinion that since it was proved that the workman had remained absent on various dates and had reported for duty late on several occasions, it was necessary that he be punished by forfeiture of 50% of his back wages. Accordingly, the Labour Court granted reinstatement with continuity of service and denied 50% of the back wages payable to the workman.

7. Appeals were preferred under Section 84 of the Bombay Industrial Relations Act by both, the workman and the Karkhana. The Industrial Court confirmed the findings of the Labour Court, that the punishment of dismissal for the proved misconduct was disproportionate. It, therefore, upheld the relief granted by the Labour Court of reinstatement with continuity of service. The Industrial Court, however, did not accept the findings of the Labour Court regarding the ownership of the footwear shop. The Industrial Court was of the view that the shop licence could not have been produced as Patan in which the

footwear shop was located, was a small Taluka which fallS outside the purview of the Bombay Shops and Establishments Act. However, the Industrial Court held that the Labour Court was right in denying half back wages since the punishment imposed was too severe for the acts of misconduct proved against the workman.

8. Nobody appears for the Karkhana today. With the assistance of Mr. Bapat for the workman, I have perused the impugned judgments and other material on record. I am of the view that there is no need to interfere with the concurrent findings recorded by both the Courts below. In my view, there is no error of law apparent on the face of the record requiring interference by this Court in its writ jurisdiction. Once two Courts have concluded that the punishment imposed is disproportionate, there is no need to take a different view as there is no perversity in the approach of both the Courts below. It is now well settled that the propriety of the punishment imposed can always be considered by the Labour Court in an application filed under Section 78 of the Bombay Industrial Relations Act. The Labour Court, in exercise of its jurisdiction under this Section, has concluded that the punishment imposed was disproportionate. Both, the Labour Court and the Industrial Court were of the opinion that a lesser

punishment of forfeiture of part of the back wages was the punishment which was adequate. Both the Courts below have exercised their discretion fairly and judiciously.

9. In my view, therefore, there is no need to interfere with the orders of the Courts below.

10. Petitions dismissed. Rule discharged in both the writ petitions.

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(SMT. NISHITA MHATRE, J.)